U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28467023

Date: NOV. 28, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a Brazilian gospel singer, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish eligibility for the EB-2 classification or for a national interest waiver under the *Dhanasar* framework. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicated a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal but to date, we have not received a brief. The Petitioner submits a cover letter that briefly discusses the issues that will further be discussed in a subsequent brief. The Petitioner does not dispute the Director's determination that she did not establish eligibility for the EB-2 classification as an advanced degree professional.

The Director also determined the Petitioner did not qualify as an individual of exceptional ability. Specifically, the Director concluded the evidence did not establish the Petitioner met at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). We adopt and affirm the Director's decision regarding the specific issue of eligibility for the EB-2 classification. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Director concluded the Petitioner did not demonstrate she has at least ten years of full-time experience in the relevant occupation pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(F). In the cover letter, the Petitioner reiterates her earlier assertions that the supporting letters, when considered collectively, provided sufficient evidence of at least ten years of experience in gospel singing. The Petitioner also indicates for the first time that the evidence constitutes comparable evidence, but she does not provide sufficient explanation of why the evidence should be considered comparable. In addition, the submitted letters provide a general description of the Petitioner's singing career in Brazil to include her performances in conferences, conventions, events, and songs played on the radio and television but does not contain specific detail to establish the Petitioner has full-time experience in the occupation required by 8 C.F.R. § 204.5(g)(1). Moreover, the Petitioner indicated in the record that she served as an auxiliary pastor with the International Church of the [redacted] in Brazil from 2000 to 2018 and therefore, it is not clear how she worked as a full-time gospel singer during this time if she was also working as an auxiliary pastor, as claimed. The Petitioner did not provide any documentation or evidence to overcome the Director's concerns. Accordingly, we conclude the evidence is insufficient to establish eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner also contends monetary compensation is not the only form of remuneration for services, and that she instead may also include the honor and ability to headline major Christian gospel events across Brazil and "spiritual rewards." There is no evidence in the record which would permit us to evaluate the duties a gospel singer of exceptional ability would perform for the salary and their remuneration as a point of comparison. Moreover, the Petitioner did not provide any income figures for any of her work or recordings and failed to provide evidence showing how her spiritual rewards qualify under this criterion. We agree with the Director that the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) because based on the information from the record we cannot evaluate whether the Petitioner's salary or remuneration demonstrated her exceptional ability.

As noted by the Director, the letters of support provide general discussion of the Petitioner's career successes and skills and professional relationships rather than provide specific examples to establish her eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F). The evidence suggests her colleagues respect and appreciate her; however, it does not indicate the Petitioner has been recognized for achievements and significant contributions to the gospel music industry as a whole. The Petitioner states she will submit additional information to show her contributions are significant for the field of Brazilian gospel music and for specific religious organizations; however, the Petitioner did not submit any additional evidence to overcome the Director's concerns.

The evidence does not establish the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii) at the time of filing. Therefore, the Petitioner has not established eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. A final merits determination is not required. As the Petitioner has not established the threshold requirement of eligibility for the EB-2 classification, analyzing her eligibility for a national interest waiver under the *Dhanasar* framework is unnecessary. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Nevertheless, we reviewed the evidence in its totality and agree with the Director's conclusion that the record does not establish the Petitioner's eligibility for a national interest waiver.

The Petitioner has not demonstrated that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.